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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA.

Plaintiff.

v.

MICHAEL LUSTIG

Defendant

Case No.: 13-CR-3921-BEN

Date: February 18, 2014

Time: 2:00 p.m.

**UNITED STATES' SUPPLEMENTAL
RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTIONS TO:**

- 1) SUPPRESS EVIDENCE FROM CELL PHONES SEIZED LUSTIG'S PERSON;**
 - 2) DISMISS INDICTMENT BECAUSE §1591 IS UNCONSTITUTIONAL;**
 - 3) SUPPRESS EVIDENCE DUE TO VIOLATION OF CDT;**
 - 4) SUPPRESS EVIDENCE OBTAINED BY ADMINISTRATIVE SUBPOENA**

COMES NOW the plaintiff, the UNITED STATES OF AMERICA, by and through its counsel, LAURA E. DUFFY, United States Attorney, and Alessandra P. Serano, Assistant United States Attorney, and hereby responds to Defendant's above-captioned motions. This response and opposition is based upon the files and records

1 of the case together with the attached statement of facts, and the memorandum of
2 points and authorities.

3 **I**

4 **STATEMENT OF THE CASE**

5 On October 23, 2013, a two-count Indictment was returned in the Southern
6 District of California, charging Defendant Michael Lustig ("Lustig") with sex
7 trafficking of a minor in violation of 18 U.S.C. § 1591.

8 A hearing on the motion was held on January 21, 2014.

9
10 **II**

11 **STATEMENT OF FACTS**

12 **A. The Initial Lead**

13 On June 8, 2012, San Diego Sheriff's Deputies Chase Chiappino and George
14 Crysler, both with the Vista COPPS unit, conducted a "john op" targeting prostitution
15 customers at the Howard Johnson motel in Encinitas, CA.¹ An online prostitution ad
16 was posted, which Lustig responded to by phone, and stated his name was "George."
17 Upon his arrival, he was arrested for Cal. PC 647(b) (soliciting a prostitute). The ad
18 Lustig responded to advertised an adult female.

19 At the time of Lustig's arrest, deputies seized and searched incident to arrest an
20 Iphone (619-791-6552) found in his pocket. The web browser displayed the online ad
21 for the undercover officer posing as a prostitute. A second phone (purple Kyocera flip
22 phone with number 619-634-9405) was located in another pocket. A search of that
23 phone incident to arrest revealed multiple prostitution related texts such as "U wanna
24 hook up for a rewarding time this evening?" "Please confirm u r 18 years or older."
25 "...see if we want a mutually beneficial relationship." "I still have the room if u wanna
26 earn more & finish what we started."

27

¹ A copy of the Sheriff's Deputy's report is attached to Lustig's motion at Ex. A.

1 Lustig had a set of car keys in his pocket, but denied that he drove a vehicle to
 2 the motel. However, despite Lustig's lie, deputies located a vehicle that matched the
 3 car keys found in Lustig's pocket. To avoid the vehicle from being damaged or
 4 stolen, deputies towed the vehicle and later performed an inventory search. In the
 5 vehicle deputies located five additional phones. Two of those phones included a
 6 Verizon Wireless Samsung cell phone ((619) 977-4300) and a Cricket Samsung cell
 7 phone ((619)799-3816), both located in the center console of the vehicle. Deputies
 8 conducted a brief search of the five phones.² The Verizon Wireless Samsung
 9 displayed text messages such as, "Hey i have a room", "...you think you can front me
 10 the money for our date..." The Cricket Samsung cell phone displayed text messages
 11 such as, "did you get the room", "today?", "Hey, U free?"

12 A listing in the Cricket Samsung phone was for "Dominick", which had the
 13 number (619) xxx-3539 assigned to it. Another phone number assigned to
 14 "Dominick" was located inside Lustig's iPhone (found in his pocket) was (619) xxx-
 15 6033. Thus, there were two numbers associated with "Dominick" each saved in a
 16 different phone belonging to Lustig.

17 A search through law enforcement databases displayed the latter phone number
 18 for "Dominick" as being associated with a twelve year old minor female (MF1).
 19 Lustig's Cricket Samsung phone showed 39 text messages to or from MF1 between
 20 March 24, 2012 and June 8, 2012. There were over 110 received, sent or missed calls
 21 between Lustig and MF1 between the same dates.

22 Deputy Chiappino later investigated the contacts inside Lustig's Kyocera flip
 23 phone, one of the phones found on his person. One of the contacts in Lustig's
 24 Kyocera phone was under the name of "Andrew" and displayed the telephone number
 25 (602) xxx-8687. Deputy Chiappino conducted a search through law enforcement

26 ² Of the five phones, one was locked and could not be searched. Two others had no evidence relating to prostitution.
 27 Thus, the only two phones of note are the two Samsung phones described.

1 databases, which displayed that phone number being associated with a 14 year old
2 minor female (MF2). Lustig's phone displayed over sixty text messages between
3 Lustig and MF2 between October 13, 2011 and December 15, 2011. These text
4 messages appeared to use words to conceal the true meaning of what they were talking
5 about. Lustig and MF2 used the words "Bookstore" and "Library" as terms to meet up
6 for a date of prostitution. Some of those text messages read as follows: "Hey is
7 bookstore open at all today I'm in desperate need of books rite now..." "Where are
8 you? CV, LM or ??" "U free sumtime during the next 2 hours?" "Yes wuts tha latest
9 time yu can cum?" "Is tomorrow morning or noon possible if not thts fine but
10 tomorrow would be best for me".

11 **B. MF1-2 are Interviewed**

12 On July 3, 2012, Deputies Crysler and Chiappino contacted MF1 at her
13 residence and interviewed her in reference to the text messages between her and
14 Lustig. During this interview MF1 identified Lustig through a photographic line up as
15 an individual she knew as "George". MF1 stated Lustig would pay her \$80 each time
16 they met for a "hand job." MF1 stated she met with Lustig approximately five to
17 seven times between March 2012 and June 2012. MF1 confirmed her old phone
18 numbers were (619) xxx-6033 and (619) xxx-3539, which matched up with the
19 number Lustig had saved for "Dominick." MF1 confirmed that she communicated
20 with Lustig via text messaging and verbal conversation with her cell phones.

21 On July 3, 2012, Deputies Crysler and Chiappino contacted MF2 at her school
22 and interviewed her reference the text messages. During this interview MF2
23 identified Lustig through a photographic line up as an individual she knew as
24 "George". MF2 stated she had full sex with Lustig approximately three times during
25 October and November, 2011. Lustig would pay her \$200 each time. MF2 stated she
26 was thirteen years old while she was involved with prostitution with Lustig. MF2 confirmed that
27 MF2 confirmed her old phone number was indeed (602) xxx-8687. MF2 confirmed that

1 she communicated to Lustig via text messaging and verbal conversation using (602)
2 xxx-8687.

3 **C. Further Investigation**

4 Deputies located motel receipts at various motels on El Cajon Blvd under
5 Lustig's name for the date ranges referenced above. Deputy Chiappino obtained
6 video footage of Lustig in his dark colored sedan with MF1 parked in the parking lot,
7 getting out of the car and entering a room on May 30, 2012. About 25 minutes later,
8 they exit the room and get back into the car. MF1 goes in the back seat of the car.
9

10 **D. Subsequent Search Warrants were Obtained to Search the Phones Found
11 in the Vehicle**

12 Although the two cell phones located in Defendant's vehicle were searched by San
13 Diego Sheriff's Deputies pursuant to the lawful arrest of Lustig for prostitution in
14 June 2012, the United States sought and obtained search warrants for the two phones
15 and the vehicle after he had been arrested for the current charges.³ Both of the search
16 warrants are attached to Lustig's motion as Exhibits at pages 15-28 and 29-41. In the
17 search warrants, the FBI agent who swore out the affidavit informed the magistrate
18 judge that the phones located in the car had been previously searched, but that none of
19 that information had been included in the application for the search warrant. See
20 Lustig's Motion, Ex. 25-4, page 10.

21 **III**

22 **ARGUMENT**

23 Lustig filed 4 motions to which the United States responded in writing. At the
24 hearing, the Court raised the following issue: why did the San Diego Sheriff's deputies
25 not secure a search warrant for Defendant's phones found on his person or his vehicle at
26

27 ³ In addition, the search warrant application sought authorization to search two additional phones in Lustig's possession
28 at the time of his arrest for the federal charges. Lustig does not challenge the validity of the search for those phones.

1 the time of the Defendant's arrest. The United States responded that the deputies
 2 probably could have secured a state search warrant for the phones and the vehicle.
 3 However, the undersigned was mistaken after further legal research.

4 At the time of Defendant's phones and vehicle were searched, Defendant had been
 5 arrested for PC 647(b), disorderly conduct, a misdemeanor. See Cal. PC 647(b). Under
 6 California law, the deputies were precluded from seeking a search warrant under
 7 California Penal Code Section 1524. Section 1524 delineates 13 provisions as to when
 8 state law enforcement may seek a state search warrant. These include:

- 9 (1) When the property was stolen or embezzled.
- 10 (2) When the property or things were used in committing a felony.
- 11 (3) When the property or things are in the possession of a person with the intent to
 use the as a means to commit a public offense.
- 12 (4) When the property or things indicate that the person has committed a felony.
- 13 (5) When the property or things tends to show child exploitation
- 14 (6) When there is an arrest warrant for a person.
- 15 (7) Search warrant to an electronic service provider
- 16 (8) When the property or items show a violation of the Labor Code
- 17 (9) Weapons or firearms
- 18 (10) & (11) Weapons or firearms possessed by a certain class of person
- 19 (12) tracking devices
- 20 (13)seeking a blood sample to show DUI.

21 None of these provisions include a misdemeanor crime such as soliciting
 22 prostitution. These provisions limit California law enforcement to obtain search warrants
 23 in a delineated number of offenses, which does not include PC 647(b). See e.g. People v.
 24 Sweig, 167 Cal.App. 4th 1145, 1152 (3rd App. Dist. 2008)(describing a factual scenario
 25 that does not fall within "the limited grounds set forth in §1524). Law enforcement did
 26

1 not know about Defendant's involvement with the minors –which would make his
2 conduct a felony and involves the exploitation of a child – prior to conducting the
3 searches without search warrants.

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5 **IV**

6 **CONCLUSION**

7 For the above stated reasons, the United States respectfully requests that
8 Defendant's motions be denied.

9 DATED: January 31, 2014

10 Respectfully submitted,

11 LAURA E. DUFFY
12 United States Attorney

13 /s/Alessandra P. Serano
14 ALESSANDRA P. SERANO
15 Assistant United States Attorney

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28 *United States' Response in Opposition to Defendants'*

1
2 **UNITED STATES DISTRICT COURT**
3 **SOUTHERN DISTRICT OF CALIFORNIA**

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 MICHAEL LUSTIG,

8 Defendant

Case No.: 13-CR-3921-BEN

9 CERTIFICATE OF SERVICE

10 IT IS HEREBY CERTIFIED THAT:

11 I, Alessandra P. Serano, am a citizen of the United States and am at least
12 eighteen years of age. My business address is 880 Front Street, Room 6293, San
13 Diego, California 92101-8893.

14 I am not a party to the above-entitled action. I have caused service of United
15 States' Supp. RESPONSE IN OPPOSITION TO DEFENDANTS' MOTIONS to
16 SUPPRESS EVIDENCE, et al, together with memorandum of points and authorities
17 on the following parties by electronically filing the foregoing with the Clerk of the
18 District Court using its ECF System, which electronically notifies them.

19 Timothy Scott, Esq.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on January 31, 2014.

22 s/Alessandra P. Serano
23 ALESSANDRA P. SERANO